

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

November 10, 2004

GSBCA 16488-RELO

In the Matter of MICHAEL L. RIVERA

Michael L. Rivera, Buffalo, NY, Claimant.

Shirley L. Autry, Deputy Director, Finance, United States Army Corps of Engineers,
Millington, TN, appearing for Department of the Army.

PARKER, Board Judge.

Background

Michael L. Rivera, a civilian employee of the United States Army Corps of Engineers, was transferred from Kenova, West Virginia, to Buffalo, New York, in December 2002. He purchased a house in New York and incurred, according to the settlement sheet, a "mortgage broker fee" equal to one percent of the loan amount (\$2565).

Mr. Rivera has explained that, although the item appears on the settlement sheet as a mortgage broker fee, both the lender and mortgage broker had always referred to the one percent charge as a "loan origination fee" that would cover the administrative charges to process the loan. The lender did not charge a separate loan origination fee.

The Corps of Engineers has denied Mr. Rivera's claim for reimbursement of the mortgage broker fee and he has asked the Board to review the Corps' decision.

Discussion

Although the Federal Travel Regulation (FTR) does not specifically authorize reimbursement of fees paid to a mortgage broker, we have held that such fees, under certain circumstances, should be considered as part of the reimbursable loan origination fee:

The [FTR] prohibit[s] reimbursement for interest on loans, points, and mortgage discounts; and for any fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act. An exception to this is provided to allow limited reimbursement of a loan origination fee (and similar charges), defined as a fee paid by the borrower to compensate the lender for administrative-type expenses incurred in originating and processing a loan.

We have held that while the regulations contemplate that ordinarily the loan origination fee will be charged by the lender, if it is clear that the administrative services for which such a fee is reimbursable are performed wholly or partially by another party such as a mortgage broker, the employee may be reimbursed for the other party's charge for such services. It also must be clear that the total fees are not greater than would have been charged without a broker being involved and the charge by the broker is not for services duplicated by the lending institution. In addition the general rules otherwise applicable to reimbursement for loan origination fees are applicable to such fees charged by the brokers or a combination of fees charged by a broker and lending institution.

Philip R. Merkel, GSBCA 14668-RELO, 98-2 BCA ¶ 30,094 (quoting Paul A. Werner, B-248538 (Sept. 24, 1992)).

With exceptions not here relevant, an employee may be reimbursed for loan origination fees and similar charges in an amount not in excess of one percent of the loan

amount. 41 CFR 302-11.200 (2002); Joint Travel Regulation (JTR) C14002-A4a(2) (Dec. 1, 2002). Because the mortgage broker fee incurred by Mr. Rivera was to cover administrative charges for processing his loan and, thus, was really a loan origination fee, he may be reimbursed for that and similar charges not to exceed one percent of the loan amount.

ROBERT W. PARKER
Board Judge